

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2090 JB

JONAS LOPEZ-MORALES,

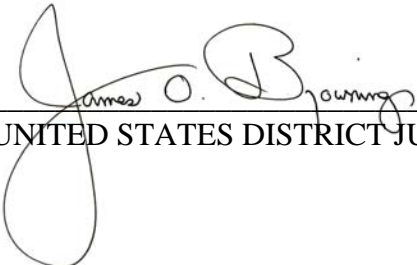
Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Sentencing Memorandum, filed September 17, 2010 (Doc. 14). The Court held a sentencing hearing on October 15, 2010. The primary issues are whether the Court should grant Defendant Jonas Lopez-Morales' request for: (I) a sentence on the low end of the sentencing guidelines range, specifically a sentence of 30 months; (ii) pre-sentence confinement credit from May 30, 2010; and (iii) a waiver of any and all fines and special penalties. The United States recommended a sentence of 30 months. Although the United States did not request any fines, it did not waive the special penalty assessment. For reasons stated at the hearing and for other reasons consistent therewith, the Court will commit Lopez-Morales to the custody of the Bureau of Prisons for a term of 30 months. The Court will not impose a fine, but will impose a special penalty assessment of \$100.00. The Court cannot order pre-sentence confinement credit, see United States v. Jenkins, 38 F.3d 1143, 1144 (10th Cir. 1994)(stating that "a district court is without jurisdiction to award a sentence credit at sentencing;" rather, the authority resides with the "Attorney General, through the Bureau of Prisons, after sentencing"), but the record and Lopez-Morales' file will accurately reflect the amount of time he has been in custody so that the Bureau of Prisons ("BOP") can make the correct calculations. The Court does not anticipate

there being a problem in the calculation. If there is a problem, however, Lopez-Morales may appeal the BOP's calculation of his sentence under 28 U.S.C. § 2241.

IT IS ORDERED that Defendant Jonas Lopez-Morales' requests in his Sentencing Memorandum, filed September 17, 2010 (Doc. 14) are granted in part and denied in part. The Court grants Lopez-Morales' request that it not impose any fines, but it denies his request that it waive any special penalties. The Court denies Lopez-Morales' request for pre-sentence confinement credit, because it cannot properly order pre-sentence confinement credit. The Court grants Lopez-Morales' request for a sentence on the low end of the sentencing guidelines range, and commits Lopez-Morales to the custody of the Bureau of Prisons for a term of 30 months. The Court places Lopez-Morales on supervised release for a term of 2 years. The Court also orders Lopez-Morales to pay a special penalty assessment of \$100.00.


UNITED STATES DISTRICT JUDGE

Counsel:

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